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Supreme Court, U.S.
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No. _____

In the Supreme Court of the United States

KEVIN STARKS,

Petitioner,

v.

THE STATE OF MICHIGAN,

Respondent.

On Petition for a Writ of Certiorari to the Michigan Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. THE MICHIGAN STATE COURTS FAILED TO APPLY THE PROPER LEGAL STANDARDS ARTICULATED BY *TERRY v OHIO*, 392 U.S. 1 (1968), *MICHIGAN v CHESTERNUT*, 486 U.S. 567, 573 (1988), AND *ILLINOIS V WARDLOW*, 528 U.S. 119 (2000) TO DETERMINE WHETHER THE INVESTIGATING OFFICERS HAD ONLY AN INCHOATE AND UNPARTICULARIZED HUNCH OF CRIMINAL ACTIVITY, OR WHETHER THEY HAD A REASONABLE, ARTICULABLE SUSPICION OF CRIMINAL ACTIVITY, JUSTIFYING THE STOP AND DETENTION OF THE PETITIONER; AS A RESULT, THE MICHIGAN COURTS IMPROPERLY REFUSED TO SUPPRESS THE FRUITS OF THE ILLEGAL SEIZURE AND DETENTION.

II. THE MICHIGAN STATE COURTS FAILED TO APPLY THE PROPER LEGAL STANDARDS SET FORTH BY *ILLINOIS v GATES*, 462 U.S. 213, 239 (1983); AND *MARYLAND v GARRISON*, 480 U.S. 79, 84 (1987), AND UPHELD A SEARCH WARRANT WHERE THE AFFIDAVIT SUBMITTED TO OBTAIN THE SEARCH WARRANT FAILED TO ESTABLISH THAT THE ADDRESS TO BE SEARCHED HAD ANY CONNECTION TO THE DEFENDANT; FAILED TO PROVIDE ANY FACTS TO SUPPORT A CONCLUSION THAT THE SOUGHT-AFTER CONTRABAND WOULD BE FOUND IN THE PREMISES TO BE SEARCHED; AND UTILIZED INFORMATION WHICH THE POLICE OBTAINED AS THE FRUIT OF THE EARLIER ILLEGAL WARRANTLESS SEIZURE AND DETENTION OF THE PETITIONER; AND THEREBY FAILED TO

ESTABLISH PROBABLE CAUSE TO JUSTIFY THE SEARCH; AND, AS A RESULT, THE MICHIGAN COURTS IMPROPERLY REFUSED TO SUPPRESS THE FRUITS OF THE EXECUTION OF THE ILLEGALLY ISSUED SEARCH WARRANT.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Kevin Starks ("Petitioner" or "Mr. Starks") respectfully prays that a Writ of Certiorari issue to review the January 29, 2007 Order of the Michigan Supreme Court denying the Petitioner's Application for Leave to Appeal. *People v. Kevin Starks*, 477 Mich. 1007 (2007) (App. A).

OPINIONS BELOW

On July 22, 2004, the Oakland County Circuit Court ("Trial Court"), issued an Opinion and Order Denying Petitioner's Motion to Suppress Evidence Seized Pursuant to Warrantless Arrest and Search. (App. G). On September 28, 2004, the Trial Court issued an Opinion and Order Denying Petitioner's Motion to Suppress Evidence Seized Pursuant to Search Warrant. (App. F). Petitioner initially filed for interlocutory relief from both Orders; his interlocutory Application for Leave to Appeal to the Michigan Court of Appeals was denied on April 11, 2005 "for failure to persuade the Court of the need for immediate appellate review." (App. E). His subsequent interlocutory Application for Leave to Appeal to the Michigan Supreme Court was denied on October 31, 2005, because the Court was "not persuaded that the questions presented should now be reviewed by this Court." *People v. Kevin Starks*, 474 Mich. 911 (2005) (App. D).

Petitioner subsequently entered into a conditional plea of guilty to the criminal charges, and was sentenced to two concurrent prison terms of two years, to be followed by two concurrent prison terms of 20 to 45 years and two to seven and one half years in prison (App. C). Petitioner timely filed an Application for Leave to Appeal, pursuant to his conditional plea agreement. On September 22, 2006 The

Michigan Court of Appeals issued an Order denying leave to appeal "for lack of merit in the grounds presented." (App. B). Petitioner's subsequent timely Application for Leave to Appeal was denied by Order of the Michigan Supreme Court, because the Court was "not persuaded that the questions presented should be reviewed by this Court." *People v. Kevin Starks*, 477 Mich. 1007 (2007) (App. A).

STATEMENT OF JURISDICTION

Petitioner seeks review of the Order issued by the Michigan Supreme Court on January 29, 2007, *People v. Kevin Maurice Starks*, 477 Mich. 1007 (2007) (App. A), denying leave to appeal from the Order of the Michigan Court of Appeals issued September 22, 2006 (App B), denying leave to appeal from the Trial Court Opinions and Orders issued on July 22, 2004 and September 28, 2004 (Apps. F & G), by the Oakland County Circuit Court, Case No. 03-188576-FH.

STATUTORY PROVISION INVOLVED

This Court has jurisdiction pursuant to 28 U.S. C. Sec. 1257(a).

STATEMENT OF THE CASE

A. Procedural History

Mr. Starks was charged in Michigan's Oakland Circuit Court (Trial Court) in a four count felony Information with one count of Possession With Intent to Deliver Between 225 and 650 grams of Cocaine, in violation of MCL 333.7401(2)(a)(ii); MSA 14.15 (7401) (2)(a)(ii) (hereinafter: "PWIDC"); one count of Felon in Possession of a Firearm, in violation of MCL 750.224f; MSA 28.421(6) (hereinafter:

"FIP"), and two counts of Possession of a Firearm During the Commission of a Felony, in violation of MCL750.227b; MSA 28.424(2) (hereinafter: "Felony Firearm"). Mr. Starks was also charged with being an Habitual Offender, Second Offense.

Petitioner filed two Motions in the Trial Court. The first, entitled: "Motion to Suppress Evidence, and for an Evidentiary Hearing," challenged the investigating officers' initial warrantless blockade of the vehicle driven by Mr. Starks; and the subsequent stop, seizure, detention, arrest, and search of Mr. Starks and the vehicle. Mr. Starks contended all this was done without probable cause, or even reasonable suspicion, to believe he was committing any offense, or was in possession of contraband. This motion requested the suppression of all drugs and other fruits of the warrantless search and seizure of Mr. Starks and his vehicle, as well as all statements obtained from Mr. Starks and the vehicle's passenger, including the illegally obtained statements which were inserted into the Affidavit used to obtain the Search Warrant, which was the subject of the second motion.

Petitioner's second motion was entitled: "Motion to Quash Search Warrant and to Suppress Physical Evidence Illegally Seized." This motion challenged both the facial sufficiency of the Affidavit submitted to obtain the search warrant for a residential premises in Farmington Hills, Mi., specifically, 24776 W. Woodside Ct., Apt. 44205, Farmington Hills, Mi. 48335, and alternatively contended that all information obtained illegally during the earlier seizure and arrest of Mr. Starks should be redacted from the challenged Affidavit, and its sufficiency judged as redacted. (The Search Warrant, the Affidavit, and the Return are attached as App. H).

The Trial Court conducted an evidentiary hearing with respect to Petitioner's first Motion to Suppress on March 3, 2004. On July 22, 2004 the trial court issued an Opinion and Order denying Petitioner's first Motion to Suppress (App. G).

The Trial Court entertained oral argument with respect to Petitioner's Motion challenging the validity of the Search Warrant Affidavit on September 22, 2004. On September 28, 2004, the Trial Court issued an Opinion denying this motion. (App. F).

On March 27, 2006, Petitioner offered a conditional plea of guilty, pursuant to MCR 6.301(C)(2), to all four counts in the Information, and to his status as a second habitual offender, which plea preserved Petitioner's rights to seek appellate review of both trial court Opinions and Orders(App. F & G).

B. Factual Summary

On January 14, 2003, two Police Officers seized Mr. Starks by first blockading his motor vehicle with a police car, so he could not leave the restaurant parking lot where his car was parked. This was done before the officers had observed any illegal activity whatsoever. Immediately after Mr. Starks' vehicle was blocked so he could not leave, one of the two officers allegedly observed a hand-to-hand drug transaction performed inside the vehicle by Mr. Starks with a Mr. Miscuk, a passenger who had just gotten into the car. The officers then stopped, seized, arrested, detained, and searched both men and thee vehicle without a warrant, seizing drugs and money. Both men subsequently made incriminating statements while in custody.

Later that same day, the officers drafted an Affidavit for a Search Warrant for the search the residential premises at 24776 W. Woodside, Apr. 44205, Farmington Hills, Mi. 48335. (The Search Warrant, Affidavit, and Return are attached as App. H). The Affidavit was based largely upon information obtained unlawfully, during the warrantless illegal stop, arrest, detention, and interrogation of Mr. Starks and Mr. Miscuk, after their arrest.

Upon searching the Farmington Hills apartment, the officers seized: suspected cocaine, cash, a money counter, residency papers, two scales, a Glock handgun, and miscellaneous other items of physical evidence and papers (App. H).

Further facts will be mentioned in the text of this Petition, as necessary.

REASONS FOR GRANTING THE WRIT

I. THE MICHIGAN STATE COURTS FAILED TO APPLY THE PROPER LEGAL STANDARDS ARTICULATED BY *TERRY v. OHIO*, 392 U.S. 1 (1968), *MICHIGAN v. CHESTERNUT*, 486 U.S. 567, 573 (1988), AND ILLINOIS V. WARDLOW, 528 U.S. 119 (2000) TO DETERMINE WHETHER THE INVESTIGATING OFFICERS HAD ONLY AN INCHOATE AND UNPARTICULARIZED HUNCH OF CRIMINAL ACTIVITY, OR WHETHER THEY HAD A REASONABLE, ARTICULABLE SUSPICION OF CRIMINAL ACTIVITY, JUSTIFYING THE STOP AND DETENTION OF THE PETITIONER; AS A RESULT, THE MICHIGAN COURTS IMPROPERLY REFUSED TO SUPPRESS THE

FRUITS OF THE ILLEGAL SEIZURE AND DETENTION.

Police Officer James Meade ("Meade") testified at the evidentiary hearing that, at about 4:00 p.m., in broad daylight, he was on duty on January 14, 2003 with his partner, Officer Al DiPrima ("DiPrima"), monitoring the parking lot of a White Castle Restaurant, which was open for business, for drug trafficking. Meade observed a tan Cadillac arrive and sit in the parking lot for about 5-10 minutes. The Cadillac driver (later determined to be Petitioner) did not either go inside the Restaurant, or go through the drive-through line. Then, a Ford Ranger pulled up; a man in the front passenger seat of the Ranger (later determined to be Miscuk) got out and got into the front passenger seat of the Cadillac. Petitioner and Miscuk turned to face each other, and they appeared to be talking.

Meade immediately pulled the police vehicle up behind the Cadillac, and both officers got out. Meade admitted that his purpose was to block the Cadillac in, so it could not drive away, and so Mr. Starks would not be free to leave. In order for Mr. Starks to drive away once the police vehicle had pulled in behind it, he would have had to drive over a "parking block." Indeed, the officers agreed that, even if Mr. Starks had tried to drive over the parking block, they would have stopped him.

After getting out, Meade went to the driver's side of the Cadillac, while DiPrima went to the passenger side. Meade claimed he positioned himself standing right next to the driver's door of the Cadillac, just inches from the vehicle window, for a few seconds. He claimed he was then able to look through the tinted vehicle windows, in broad daylight, and observe an actual drug transaction take place. Meade

claimed he observed Mr. Starks hand Miscuk a knotted up sandwich bag containing suspected cocaine, and observed Miscuk hand Mr. Starks a sum of cash. Mead then ordered Mr. Starks out of the vehicle, and arrested him for Delivery of Cocaine.

DiPrima, approached the Cadillac from the passenger side, but stayed back a little. He did not himself observe any transaction involving Mr. Starks and Miscuk.

The drugs were in an amount commonly referred to as an "eight ball;" only the size of a large piece of candy, or of a thumb and forefinger together.

Mr. Starks testified and admitted he had sold an eight ball to Miscuk. But Mr. Starks explained that Miscuk had obtained possession of the eight ball and put it in his pocket, and Mr. Starks had already received $150.00 from Miscuk and placed it under his leg, before the Officers' vehicle had pulled up behind his vehicle. Neither the drug package nor the money were in plain view when the officers pulled up, walked up to the Cadillac, or as they stood alongside his vehicle.

Mr. Starks explained that after the drug transaction, he had observed the police officers about 100 feet away, and watched their vehicle approach. When the officers' used their car to block Petitioner's vehicle, he did not feel he was free to leave the parking lot. Mr. Starks would have left the area of the parking lot if he had not been blocked in by the police vehicle. The two officers then approached on foot, pulled both Mr. Starks and Miscuk out of the Cadillac, and placed them under arrest.

The Opinion of the Trial Court says (App. G, at 2), in part:

> Officer DePrima testified that prior to the arrest, there was only one police vehicle present and that it pulled in behind the Cadillac. Officer DePrima testified that the Cadillac drew their attention because it was parked approximately fifty feet from the White Castle and was running for about ten minutes before the Ranger arrived. (EHT, p. 35).

A person has been seized within the meaning of U.S. Const., Am. IV, when, in light of all the circumstances, a reasonable person would have believed he or she was not free to leave. *Michigan v. Chesternut*, 486 U.S. 567, 573 (1988).

Officer Meade admitted that Mr. Starks and the occupant of the Cadillac were not free to leave once he pulled the police vehicle in behind them. And Mr. Starks, quite logically, said he did not feel free to leave once the police car blocked him in.

Petitioner contends the blocking of his' vehicle was either an arrest, or was an investigatory stop. An arrest must of course be based upon probable cause. *Chesternut, supra*. An investigatory stop must be based on reasonable suspicion. U.S. Const. Ams. IV and XIV. As stated in *Terry v. Ohio*, 392 U.S. 1, 22 (1968):

> A police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest. *Terry v. Ohio*, 392 U.S. 1, 22 (1968).

And, as summarized in *Illinois v. Wardlow*, 528 U.S. 119, 223-224 (2000):

> In Terry, we held that an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has reasonable, articulable suspicion that criminal activity is afoot. While reasonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requites at least a minimal level of objective justification for making the stop. The officer must be able to articulate more than an "inchoate and unparticularized suspicion or 'hunch'" of criminal activity. *Terry*, *Supra*, at 27.

Here, the officers claimed they blocked the Cadillac in based on three facts: (1) Mr. Starks sat idling in his vehicle for 5-10 minutes" in mid-afternoon in the parking lot of a restaurant open for business; (2) the parking lot had a reputation for drug dealing; and (3) Mr. Starks was met at that location by a third party who got in his car. These facts, collectively or individually, did not even provide reasonable suspicion justifying an investigative stop, let alone justify the full-blown detention and arrest which in fact occurred. . Even according to the Officers' version of events, the blockading of Mr. Starks' vehicle was indisputably an arrest, for which probable cause is required.

However, the Trial Court's Opinion only concluded that: "The Court finds that the testimony of the officers is credible." (App. G, at 3). The Trial Court never addressed the critical legal issue, which is whether it was lawful for the officers to blockade Mr. Starks' vehicle based upon the

information the officers had at the time the blockade was initiated. The Trial Court's credibility determination failed to address or decide the critical issue in this case.

United States v. Tuley, 161 F.3d 513 (8th Circuit 1998), held that when the police blockade the vehicle of a suspect to prevent it from leaving, this is a seizure. Further, *Tuley* stands for the proposition that a vehicle which is sitting idle in an area of suspected criminal activity is not thereby subject to an investigatory stop pursuant to *Terry*. Mr. Starks agrees with these holdings. But the facts of *Tuley*, when contrasted with the facts of the instant case, demonstrate when the specifically articulable facts available to the officers create a reasonable suspicion of criminal activity, thereby justifying a *Terry* investigative stop.

In *Tuley*, *supra*, an officer observed defendant Tuley as he returned with a can of pop to his pickup truck, which was parked across the diagonal lines of the parking lot of a closed gas station at 3:00 am. The officer also observed that the pick-up truck had an in-transit sticker but no license plates, and was parked over the station's gasoline storage tanks. A coil of garden hose was tied to the side of the truck near its gas tank. There had been recent attempted robberies of gas stations in the area. Suspicious that Tuley might be attempting to steal gas out of the storage tanks, the officer pulled his patrol car behind Tuley's truck, which was blocked in the front by an awning. He approached Tuley in his truck and requested identification. *Tuley* held that the combination of the prior knowledge of gasoline being stolen from gas stations in the area, together with the observations that the gas station was closed, that it was 3:00 a.m., and that a tool (the hose) which could be used to steal gas, was present, all considered together, supported a reasonable suspicion that criminal activity was afoot.

In contrast, in the instant case, Petitioner was in the parking lot of an open restaurant at 4:00 pm, not 3:00 am. In *Tuley*, a viable criminal tool, the garden hose, was visible. No such tool of criminal activity was seen by the Officers here prior to blockading Mr. Starks' car and seizing his person. Here, although the officers claimed the parking lot to be an area of drug trafficking, they never claimed Mr. Starks' behavior was uniquely consistent with that of drug dealers. For example, the officers never claimed to have seen a succession of individuals approach Petitioner and engage in some behavior characteristic of drug dealing. The officers did not claim to have observed any ongoing activity that would distinguish Mr. Starks from the average citizen waiting to meet someone. The Officers failed to explain how their prior knowledge and present observations supported their suspicions; they relied on hunches and guesswork. But, the law is clear: "Reasonable suspicion cannot rest upon the hunch of an experienced officer even if the hunch turns out to be right" *United States v. Jimenez-Medina*, 173 F.3d 752, 756 (9th Cir, 1999).

Tuley applied *Terry* in the context of automotive seizures. *Tuley* and many other cases have held that when police officers blockade a suspect's vehicle, they have seized and detained the person of that suspect, and such a seizure must be legally justified by the facts available to the officer at the time of the blockade. These cases all hold that officers blockade a vehicle, the occupants of the vehicle are no longer free to leave, and have been seized within the meaning of the Fourth Amendment: *Hicks v. United States*, 705 A.2d 636, 640-41 (D.C. Cir 1997); *United States v. Marin*, 669 F.2d 73, 81-82 (2nd Cir 1982); *United States v. Ceballos*, 654 F.2d 177, 184 (2nd Cir 1981); *United States v. Strickler*, 490 F.2d 378, 379-380 (9th Cir 1974); *United States v. Whitlock*, 418 F. Supp. 138, 140, n. 1, 142-143 (E.D. Mich.

1976), *aff'd. without op.*, 556 F.2d 583 (6th Cir 1977); *Commonwealth v. Bottari*, 482 N.E.2d 321, 323-325 (Mass. 1985); *State v. Williams*, 689 P.2d 1065, 1067-1070 (Wash. 1984); *State v. Zielman*, 384 So.2d 359, 361-363 (La, 1980).

Whitlock, *supra*, was a District Court opinion adopted by the Sixth Circuit as its own opinion. Defendant Whitlock exited the front door of an apartment building, and got into the driver's seat of an automobile. As he began to back out of the parting space, DEA agents pulled their vehicle up and parked it so Whitlock's automobile was blockaded and could not emerge from the parking space. Whitlock was then ordered out of his vehicle and handcuffed. His person and his car were then searched. *Whitlock*, *supra*, 418 F. Supp, at 140-142. The District Court pointed out:

> The detention that was effected by the agents in this case was clearly not limited to an initial stop for the purposes of making an on-the-scene Investigation. Such a stop, involving a temporary detention, may be justified on facts that do not constitute probable cause to effect a formal arrest. *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968). Such official action, however, must be limited to "the minimal intrusion of a brief stop" for investigation. *United States v. Brignoni-Ponce*, 422 U.S. 873, 95 S. Ct. 2574, 45 L.Ed. 2d 607 (1975).
>
> In the instant case, the detention that was effected was not a minimal intrusion but a massive assault on the defendant's freedom of movement under the authority of law. The defendant was never told that he was free to leave or that he could refuse to cooperate with the agents. Quite to the contrary, the defendant was

> physically restrained by the handcuffs, demobilized by the seizure of his car keys, denied his identification by the confiscation of his billfold, and was, even according to the testimony of Agent Baudoin, "not free to leave." *Whitlock, supra*, 418 F. Supp., at 142-143.

The District Court held the arrest of Whitlock was unlawful, as not based on probable cause. *Id.*, at 143-145. The court ordered the fruits of the unlawful arrest suppressed, reasoning as follows:

> From the very outset of his detention, therefore, Mr. Whitlock was under arrest. *See Henry v. United States*, 361 U.S. 98, 80 S. Ct. 168, 4 L.Ed.2d 134 (1959); Manning v. Jarnigan 501 F.2d 408 (6th Cir 1974). For his arrest to have been lawful, the defendant's arrest must have been based upon probable cause. *Giordenello v. United States*, 357 U.S. 480, 78 S Ct 1245, 2 L.Ed.2d 1503 (1958). ....
>
> The facts and circumstances within Agent Baudoin's knowledge, at the time the arrest was initiated, do not give rise to reasonable grounds for believing that defendant Whitlock was committing a violation of either 21 USC Section 841(a)(1) or 21 USC Section 952(a). *Whitlock, supra*, at 143.

In *Whitlock*, as in the instant case, the officers made a premature arrest; premature because the information developed by the investigation failed to establish probable cause to justify the arrest. As a result, Whitlock, just like Mr. Starks, was not simply the subject of a temporary detention for investigative purposes, as authorized by *Terry, supra*, but was subjected to a full-blown arrest before the

investigating officers had developed probable cause to support such an arrest.

Similarly, in *Ceballos*, *supra*, the Court ordered the evidence suppressed when the agents blockaded the car of the Defendant before the investigation had developed probable cause to justify such an arrest. The Court explained:

> The contentions of the parties may be simply stated. It is undisputed that a seizure within the meaning of the Fourth Amendment occurred. The Government contends that when the officers blocked the progress of Ceballos' car and approached with guns drawn they were performing an investigative stop which was supported by reasonable suspicion based on the information known to them, and that the circumstances immediately thereafter (the bag falling to the ground, being partially open and the glassine envelope with white powder being visible) furnished probable cause for an arrest. With respect to the force employed by the officers (blocking Ceballos' vehicle and drawing guns), the Government argues the intrusion was justified by the seriousness of the suspected offenses, the officers' fears for their personal safety, and the possibility that Ceballos would have fled, with a resulting high speed chase which might have endangered bystanders. Appellant argues that the arrest in fact took place when at least three vehicles blocked appellant's way and he was confronted by several officers, some of whom had drawn guns, and that at that point, the officers lacked probable cause to arrest appellant.
>
> We are thus called upon to decide whether the appellant was subjected to an "investigatory stop"

> governed by the reasonable suspicion test established by *Terry v. Ohio*, *supra*, or whether he was subjected to such a degree of force that the stop was in fact an arrest governed by the requirement of probable cause. For the reasons stated herein, we conclude that appellant was arrested when the police officers blocked the progress of his car and approached with guns drawn, and that such arrest was unsupported by probable cause. Accordingly, we reverse and remand for further proceedings.....
> *Ceballos*, 654 F.2d, at 180-181.

The Second Circuit concluded that the restraints on the freedom of movement of Ceballos easily qualified as an arrest, rather then the more limited intrusion of an investigatory stop. The Court then concluded the officers lacked probable cause for the arrest, and ordered the suppression of the fruits of the illegal arrest. *Id.*, at 186.

The Second Circuit upheld these same principles in *Marin*, *supra*:

> ...[P]robable cause is necessary when police restrain an individual in a manner that, though not technically an arrest, is nonetheless so intrusive as to be "tantamount" to an arrest. *See, e.g., Dunaway v. New York*, 442 U.S. 200, 212-16, 99 S. Ct. 2248, 2256-58, 60 L.Ed.2d 824 (1979); *United States v. Ceballos*, 654 F.2d 177 182 (2nd Cir 1981); *United States v. Vasquez*, 638 F.2d 507, 521 (2nd Cir 1980). When, however, police restrain an individual in a manner that falls short of arrest or its functional equivalent, less than probable cause will suffice. In such a situation, the Fourth Amendment imposes the more flexible requirement that the stop be, in all the

> circumstances, "reasonable," *see, e.g., United States v. Cortez*, 449 U.S. 411, 101 S. Ct. 690, 695, 66 L.Ed.2d 621 (1981); *Terry v. Ohio*, 392 U.S. 1, 19, 88 S. Ct. 1868, 1878, 20 L.Ed.2d 889 (1968), and that it be based upon a reasonable and articulable suspicion, e.g., *Reid v. Georgia*, 448 U.S. 438, 100 S. Ct. 275, 65 L.Ed.2d 890 (1980) (per curiam). The reasonableness of a particular stop depends in turn on the extent of the intrusion on the rights of the individual, and on the reason for the restraint. *See United States v. Vasquez*, *supra*, 638 F.2d at 520. *Marin*, *supra*, at 81.

In *Marin*, the Court concluded that the detention of the defendant constituted a full-blown arrest. Ultimately, the court concluded that the officers did indeed have probable cause and so the arrest was lawful. *Marin*, *supra*, at 81-82.

As the above cases hold, an investigative stop, just as surely as an arrest, is governed by U.S. Const. Am. IV. Such investigative stops must be evaluated to insure that the officers acted based on reasonable, articulable facts, and not based on mere speculation or hunches. Here, the officers blockaded Mr. Starks' vehicle, and seized him based upon nothing but speculation and suspicion, not based on any articulable facts, as required even for a Terry stop, let alone for a probable cause-based arrest.

The pre-seizure behavior of Mr.Starks and the third party guest who got in his car mirror the daily behavior of millions of people. In our society, the fact that illegal activity takes place at a location does not mean that everyone present at that location is involved in criminal behavior. Simply being present at a location where illegal activity takes place does not constitute a reasonable suspicion that a particular individual

is involved in illegal conduct. Citizens often meet friends or family at mutually convenient locations, such as shopping malls, restaurants, or parking lots. If the actions of the police in this case are upheld, it is not an exaggeration to say that every citizen who sits in a restaurant parking lot, waiting for a friend, is subject to detention and seizure by the police.

The officers in the instant case simply did not yet have the type of "specific objective facts" which give rise to an inference of criminal activity. There was no informant's tip here; there was no pre-seizure observation of Mr. Starks possessing contraband or anything that could be used to commit a crime; Mr. Starks was not observed committing any crimes. He was simply observed sitting in a parking lot for five or ten minutes before meeting a third party. The police officers never explained how Starks' mundane, everyday behavior supported their conclusion that he was committing or about to commit a crime. This behavior, therefore, did not give the Redford Police an articulable, reasonable suspicion to blockade Mr. Starks' vehicle, and seize his person.

United States v. Ho, 94 F.3d 932, 935 (5th Cir. 1996) holds that if the arresting officers lacked probable cause, the arrest is invalid, and evidence discovered as a result of the arrest is subject to suppression under Am. IV as the fruit of the illegal arrest. In this case, the drugs and money seized from Mr. Starks, the vehicle, and from the passenger should be suppressed; but also the statements of both Mr. Starks and the passenger, which were made during subsequent custodial interrogations, should be suppressed. These admissions were subsequently used in the Affidavit submitted to obtain the Search Warrant. *See* Issue II, *infra*.

Therefore, this Court should grant Certiorari, order that the evidence seized, pursuant to the warrantless stop and

seizure of Mr. Starks and his vehicle, should be suppressed, including the incriminating admissions made during the subsequent interrogations of both Mr. Starks and the passenger; and remand this case to the Michigan Courts for further consistent proceedings.

II. THE MICHIGAN STATE COURTS FAILED TO APPLY THE PROPER LEGAL STANDARDS SET FORTH BY *ILLINOIS v. GATES*, 462 U.S. 213, 239 (1983); AND *MARYLAND v. GARRISON*, 480 U.S. 79, 84 (1987), AND UPHELD A SEARCH WARRANT WHERE THE AFFIDAVIT SUBMITTED TO OBTAIN THE SEARCH WARRANT FAILED TO ESTABLISH THAT THE ADDRESS TO BE SEARCHED HAD ANY CONNECTION TO THE DEFENDANT; FAILED TO PROVIDE ANY FACTS TO SUPPORT A CONCLUSION THAT THE SOUGHT-AFTER CONTRABAND WOULD BE FOUND IN THE PREMISES TO BE SEARCHED; AND UTILIZED INFORMATION WHICH THE POLICE OBTAINED AS THE FRUIT OF THE EARLIER ILLEGAL WARRANTLESS SEIZURE AND DETENTION OF THE PETITIONER; AND THEREBY FAILED TO ESTABLISH PROBABLE CAUSE TO JUSTIFY THE SEARCH; AND, AS A RESULT, THE MICHIGAN COURTS IMPROPERLY REFUSED TO SUPPRESS THE FRUITS OF THE EXECUTION OF THE ILLEGALLY ISSUED SEARCH WARRANT.

Petitioner's second Trial Court motion was entitled: "Motion to Quash Search Warrant and to Suppress Physical Evidence Illegally Seized," which challenged the legal sufficiency of the Affidavit submitted to obtain the search warrant. On September 28, 2004, the Trial Court issued an

Opinion and Order denying Petitioner's challenge to the Search Warrant (App. F). The Trial Court clearly erred when it denied Petitioner's Motion to Suppress the Evidence seized pursuant to the Search Warrant because the Affidavit submitted to obtain the Search Warrant in this case (App. H) failed to provide probable cause to justify the forcible entry and search of a citizen's home, and was in part based upon illegally seized information. The conduct of the investigating police officers in obtaining and executing this search warrant violated Petitioner's right to be free from unreasonable searches and seizures of a residential premise. U.S. Const. Ams. IV and XIV.

After illegally arresting, detaining and interrogating Petitioner and Mr. Miscuk, the passenger arrested in Petitioner's car, the officers drafted an Affidavit and obtained a Search Warrant for the residential premises at 24776 W. Woodside, Apr. 44205, Farmington Hills, Mi. 48335. (The Search Warrant, the Affidavit, and the Return are attached as App. H).

The Affidavit consisted of seven paragraphs. Paragraph One identifies the Affiant as Officer DiPrima. Paragraph two summarizes the police version of the arrest of Mr. Starks at the restaurant parking lot. Paragraph three contains questions and answers allegedly given by Mr. Miscuk, the passenger, during an interrogation subsequent to his arrest in the car with Petitioner. Mr. Miscuk allegedly told the officers he had called the Petitioner at his Farmington Hills apartment, and arranged to purchase an eight-ball of cocaine. He claimed to have bought cocaine from Petitioner several times in the past, including at Petitioner's apartment in Farmington Hills. But Mr. Miscuk never provides an address for Petitioner's apartment.

Paragraph four contains questions and answers allegedly given by Petitioner during an interrogation subsequent to his illegal arrest. *See* Issue I, *supra*. Petitioner allegedly admitted that he supplied the cocaine for the transaction that day, and allegedly admitted there was ½ kilo of cocaine under the bathroom sink in his apartment (App. H). But, he is not quoted as ever stating the address of his apartment.

Paragraph five contains boilerplate language that weapons are commonly found "where illegal drugs are kept and sold."

Paragraph six states:

> That the execution of this search warrant is necessary to obtain evidence of a violation of the public health code committed at 24776 W. Woodside Court, Apartment 44205, Farmington Hills, Michigan 48335-2133

There are several references to Mr. Starks'apartment in this Affidavit, but nowhere does the Affidavit state the address of Mr. Starks' apartment. The Affidavit does not allege any connection between Petitioner and the address of 24776 W. Woodside Court, Apartment 44205. The magistrate could not have concluded from this Affidavit where Mr. Starks resided. The Affidavit never alleges that 24766 W. Woodside, apartment 44205, is a location known to have any connection whatsoever to Kevin Starks. The Affidavit does not say who is believed to live at 24776 W. Woodside Court, Apartment 44205, and there is no allegation that there is any reason to believe drugs or contraband will be found at 24766 W. Woodside, Apt. 44205.

The search warrant was authorized on January 14, 2003. Upon searching the apartment at 24766 W. Woodside, Apt.

44205, the officers allegedly seized: suspected cocaine, cash, a money counter, residency papers, two scales, a Glock handgun, and miscellaneous other items of physical evidence and papers (App. H).

A. The Affidavit failed to provide any basis for the conclusion that the contraband sought would be found in the premises to be searched, because, although the Affidavit alleged that contraband would be found at the apartment of Kevin Starks, the Affidavit never identified the premises to be searched as his apartment.

The Petitioner has a right to be free from unreasonable searches and seizures. U.S. Const., Ams. IV, XIV. These protections are fundamental to preserve the rights of all citizens to privacy, and to safeguard the sanctity of the person, of the home, and of private property. For this reason, a finding of probable cause must be warranted by the facts alleged in an Affidavit submitted to obtain a Search Warrant. In assessing a magistrate's conclusion that probable cause existed, so as to authorize the issuance of the search warrant, the reviewing court must examine the warrant and underlying affidavit in a common sense and realistic manner. In so doing, the court is bound by the facts that were presented to the magistrate in the four corners of the affidavit. *Illinois v. Gates*, 462 U.S. 213 (1983).

Upon review of the affidavit, the court is charged with determining the sufficiency of the information and whether it amounted to probable cause. To enable the magistrate to determine probable cause, the affidavit must provide sufficient factual information from which the magistrate may personally draw the appropriate inferences and form the necessary conclusion. *Giordenello v. United States*, 357 U.S. 480,

(1958). The affidavit may not be "conclusory" or "bare bones." *United States v. Weaver*, 99 F.3d 1372, 1379-80 (6th Circuit 1996). As stated in *Gates*, *supra*, 462 U.S. at 239:

> Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others....[Moreover,] In order to ensure that such an abdication of the magistrate's duty does not occur, courts must continue to conscientiously review the sufficiency of affidavits on which warrants are issued. *Id.*

The standard for review of a magistrate's decision to issue a search warrant is whether there is a Asubstantial basis" for the conclusion "that there is a 'fair probability that contraband or evidence of a crime will be found in a particular place.'" *Id.*

The information contained in the Affidavit in this case is lacking in the particularized facts and circumstances sufficient to permit a magistrate to make his or her own independent probable cause determination in one critical respect. The Affidavit fails to provide factual allegations in support of the conclusion that contraband could be found at 24776 W. Woodside Court, Apartment 44205. Although the Affidavit alleged that contraband could be found in the Petitioner's apartment, it provided no facts from which the magistrate could conclude the location of his apartment. The Affidavit thereby failed to fulfill the essential requirements of an affidavit, and the magistrate was therefore forced to abdicate her independent judicial function and issue a search warrant where probable cause was not shown.

The critical deficiency in this Affidavit is the complete failure to establish any reason to believe contraband will be found inside the premises to be searched at 24766 W. Woodside, Apartment 44205. *Maryland v. Garrison*, 480 U.S. 79, 84 (1987) reiterated the long standing principle of constitutional law that: "the scope of a lawful search is 'defined by the' places in which there is probable cause to believe that [the object of the search] may be found."

Probable cause to search must exist at the time the search warrant is issued. *Sgro v. United States*, 287 U.S. 206, 210 (1932). In this case, no concrete information was provided to the magistrate to support a reasonable belief that the items to be seized would be found at 24766 W. Woodside, apartment 44205. The necessary nexus between the sought after items and the premises to be searched was not established. Here the Affidavit on its face failed to establish probable cause, and the Search Warrant was improperly issued and executed.

The Sixth Circuit recently summarized cases where search warrants were struck down because of a failure to establish a nexus between the illegal activity and the place to be searched. *United States v. Hython*, 443 F.3d 480 (6th Cir 2006). These are all cases where the affidavit submitted to obtain the search warrant failed to establish:

> a sufficient nexus between illegal activity and a place to be searched. *See* [*United States v*] *Carpenter*, 360 F.3d [591,] at 596 [(6th Cir. 2004) (*en banc*)]. (affidavit describing marijuana field near residence "falls short of establishing required nexus" between criminal activity and residence); *United States v. Laughton*, 409 F.3d 744, 751 (6th Cir. 2005) (no modicum of evidence connected defendant, criminal activity, and address to be searched); *United States v.*

Helton, 314 F.3d 812, 821-23 (6th Cir. 2003) (outgoing calls from house to known drug dealer did not create substantial basis to believe evidence could be found in house); *United States v. Van Shutters*, 163 F.3d 331, 337 (6th Cir. 1998) (affidavit did not establish any connection between target of investigation and home to be searched); *United States v. Weaver*, 99 F.3d 1372, 1378-79 (6th Cir. 1998) (boilerplate language in affidavit failed to provide particularized facts regarding alleged crime occurring on premises to be searched); *United States v. Leake*, 998 F.2d 1359, 1365 (6th Cir. 1993) (minimal surveillance did not corroborate anonymous tip that narcotics could be found in basement of specific house);

In each of the above cited cases, the Search Warrants had to be ruled invalid because the Affidavits used to obtain them failed to allege sufficient facts from which the magistrate could properly conclude the sought-after contraband would be found in the place to be searched. When reviewing a Search Warrant and Affidavit, the magistrate must not accept the mere suspicions or conclusions of the Affiant without receiving the necessary facts to make an independent assessment. In this case, as in the cases cited above, the Affidavit is insufficient in that it does not contain the requisite facts which would allow the magistrate to make an independent assessment of probable cause to search the premises to be searched.

The Affidavit here alleged that probable cause existed to search Mr. Starks' apartment. But the Affidavit never alleged facts to establish probable cause to conclude that 24776 W. Woodside Court, Apartment 4420 was Mr. Starks' apartment, or had any connection to him whatsoever. And the

Affidavit completely failed to establish any reason to believe that contraband would be found inside the premises to be searched at 24776 W. Woodside Court, Apartment 44205. The failure to provide such information turned the magistrate into a mere rubber stamp for the police.

But the magistrate may not simply ratify the conclusions or beliefs of the Affiant. It is rather the responsibility of the Affiant to set forth in reasonable detail the alleged observations and facts that led to the formation of his conclusions or beliefs. That was not done here. Therefore, this search warrant was improperly issued, and the magistrate was not justified in relying on this Affidavit to issue the search warrant for 24776 W. Woodside Court, Apartment 44205.

Thus, the Trial Court clearly erred in holding that: "the search warrant and affidavit, when read in a common sense and realistic manner, clearly indicate that the apartment the officers were seeking to search was the Defendant's. Therefore, the motion must be denied." (App. F). The Trial Court should have found that the Affidavit failed to establish probable cause that contraband would probably be found in the premises to be searched. The Michigan appellate courts clearly erred in declining to reverse the Trial Court's erroneous determination.

Judged against the above standards, the Affidavit in this case is so lacking in facts that rise to the level of probable cause, that it was objectively unreasonable for the magistrate to approve it. For these reasons, any evidence seized pursuant to the execution of the search warrant at 24776 W. Woodside Court, Apartment 44205 should be suppressed. Therefore, this Court should grant Certiorari, order that the evidence seized pursuant to the Search Warrant must be

suppressed, and remand to the Michigan Courts for further consistent proceedings.

B. The Magistrate, in the first instance, and then the Trial Court, should have redacted and disregarded the allegations in the Affidavit concerning evidence and statements allegedly obtained from Mr. Starks and Mr. Miscuk, the passenger arrested with him, as the fruit of the earlier illegal detention and seizures, for the reasons stated *supra*, in Argument I, *supra*; absent the redacted material, the remainder of the Affidavit failed to establish probable cause for the search of the premises in question.

For the reasons stated *supra*, in Argument I, the arrest and subsequent detention of Mr. Starks and his passenger were illegal. All of the information contained in Paragraphs three and four of the Affidavit submitted to obtain the Search Warrant, and most of the information in Paragraph two was obtained through the exploitation of the illegal detention, arrest and search of Petitioner and his passenger. Therefore, all the illegally seized information should be redacted from the Affidavit, and the remaining text should be examined to determine if probable cause for the search still exists. This is the procedure followed where information which is known to be false, or which is provided in reckless disregard for the truth, is inserted into a Search Warrant Affidavit

This Court has held that statements obtained as the fruit of an illegal arrest must be suppressed as evidence. *Brown v. Illinois*, 422 U.S. 590 (1975). In *United States v. Ho*, 94 F.3d 932, 935 (5th Cir. 1996), the court held that if the arresting officers lacked probable cause, and the arrest was invalid, then all evidence discovered as a fruit of the illegally

seized evidence must also be suppressed. *United States v. Finnigin*, 113 F.3d 1182, 1185-1186 (10th Cir 1997) held that the statements made by the Defendant which were illegally obtained by the police should be disregarded in determining whether the Search Warrant Affidavit established probable cause for the search. And in *State v. Gravel*, 135 N.H. 172; 601 A.2d 678 (1991), the New Hampshire Supreme Court held that statements which were obtained from the Defendant unlawfully could not be used to establish probable cause for issuance of the search warrant. Thus, all information and evidence obtained as a result of the illegal stop, detention, arrest and interrogation of Mr. Starks and of Mr. Miscuk should be disregarded in determining whether or not the Search Warrant Affidavit in this case established probable cause for the search of the Farmington Hills apartment.

Clearly, in this case, without the information which was obtained as a fruit of the illegal seizure and detention of Mr. Starks and of his passenger, there was not probable cause for the search. The illegally obtained information must be redacted from the Search Warrant Affidavit. *United States v. Christine*, 687 F.2d 749 (3rd Cir 1982). Absent the allegations which were based on illegally-obtained information, there is clearly insufficient information alleged in the remainder of the Affidavit in this case to support a finding of probable cause. For this reason as well, the search warrant was issued illegally, and all evidence seized pursuant to its execution must be suppressed. Therefore, this Court should grant Certiorari, order that the evidence seized pursuant to the Search Warrant must be suppressed, and remand to the Michigan Courts for further consistent proceedings.

C. The "Good Faith" Exception does not save this search, where a reasonably well-trained officer would have know that the Affidavit failed to establish probable cause to support the search of the premises in question.

The "good faith" exception, as described in *United States v. Leon*, 468 U.S. 897 (1984) and *Massachusetts v. Sheppard*, 468 U.S. 981 (1984), does not save this search. The exception does not apply where, as here, the affiant's reliance on the warrant was not objectively reasonable. The inquiry is "whether a reasonably well trained officer would have known that the search was illegal despite the magistrate's authorization." *Leon*, *supra*; *Weaver*, *supra*, 1380-1381.

A Search Warrant is not saved by the good faith exception where, as here, the warrant authorizes the search and seizure of materials where there is not probable cause to believe the items sought will be found in the residence; that is, where, as here, the search warrant affidavit fails to provide a link between criminal activity and the residence to be searched. *United States v. Weber*, 915 F.2d 1282 (9th Cir. 1990); *United States v. Wanless*, 882 F.2d 1459 (9th Cir. 1989); *United States v. Hove*, 848 F.2d 137 (9th Cir. 1988). *Cf. Malley v. Briggs*, 475 U.S. 335 (1986).

Additionally, the "good faith exception" is inapplicable to a search undertaken under the purported authority of a Search Warrant which, as here, upon its face fails to establish probable cause. *Center Art Gallery-Hawaii, Inc. v. United States*, 875 F.2d 747, 752 (9th Cir. 1989); *United States v. Stubbs*, 873 F.2d 210, 212 (9th Cir. 1989).

Here, as well, a reasonably well trained police officer, such as the affiant in this case, should have known that under

elementary search and seizure law, an Affidavit which alleges contraband can be found in the home of a defendant, and then fails to allege any facts upon which it can be concluded that the Petitioner lives at the residence to be searched, is not a lawful search warrant. Therefore, the *Leon* "good faith" exception does not save this search.

CONCLUSION

For the foregoing reasons, Petitioner Kevin Starks respectfully requests this Court grant his request for a Petition for a Writ of Certiorari, determine that the initial detention and seizure of Petitioner was illegal, order the suppression of all fruits of that illegal detention and seizure; and determine that the Search Warrant was issued based upon an Affidavit which failed to establish probable cause, order that the fruits of all the illegal seizures in this case be suppressed, and that this matter be remanded to the Michigan Courts for further consistent proceedings.

Respectfully Submitted,

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APPENDIX

APPENDIX A

MICHIGAN SUPREME COURT

SC: 132508
COA: 272149
Oakland CC: 2003-188576-FH

[Filed October 31, 2005]

PEOPLE OF THE STATE OF MICHIGAN Plaintiff-Appellee,	)
v	)
KEVIN MAURICE STARKS Defendant-Appellant.	)

ORDER

On order of the Court, the application for leave to appeal the April 11, 2005 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should now be reviewed by this Court.

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 31, 2005 /s/Corbin R. Davis
Clerk

APPENDIX B

STATE OF MICHIGAN
COURT OF APPEALS

DOCKET No. 272149
LC No. 2003-188576-FH

[Filed September 22, 2006]

PEOPLE OF THE STATE OF MICHIGAN Plaintiff-Appellee,	)
v	)
KEVIN MAURICE STARKS Defendant-Appellant.	)

Before: Patrick M. Meter, Presiding Judge, William C. Whitbeck, CJ and Alton T. Davis, Judges.

ORDER

The Court orders that the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

SEP 11 2005
Date

/s/Sandra Schultz Mengel
Chief Clerk

APPENDIX C

STATE OF MICHIGAN
6th JUDICIAL CIRCUIT
OAKLAND COUNTY

JUDGMENT OF SENTENCE, COMMITMENT TO CORRECTIONS DEPARTMENT

CASE NO. 2003-188576-FH
ORI: MI-630015J

Court Address: 1200 N. Telegraph Rd. Pontiac, MI 48341

The People of the State of Michigan	v	Starks, Kevin Maurice, 24776 W Woodside Ct 44205 Farmington Hill Mi 48335 CTN 63-03-076376-01 SID 1564096E DOB 05/18/68

Prosecuting Attorney Name	Bar No.
David G. Gorcyca	P41352

Defendant Attorney Name	Bar No.
Byron H., Pitts,	P59079

The Court finds:

The defendant plead/found guilty on 3/27/2006 of the crime(s) stated below

Convicted by:

Cnt	Plea	Court	Jury
001	G		
002	G		
003	G		
004	G		

Cnt	Crime
001	C/S-Del/Manf (Narc) 450-999 GR
002	Weapons-Felony Firearm
003	Felon Poss Firearm
004	Weapons-Felony Firearm

Charge Code(s)

Cnt	MCL Citation/PAGC Code
001	333.74012A2
002	750.227B-A
003	750.224F
004	750.227B-A
****	Sentence enhanced pursuant to MCL 769.10.

IT IS ORDERED:

Participating in a special alternative incarceration unit is prohibited. Defendant is sentenced to the custody of the Michigan Department of Corrections. This sentence shall be executed immediately.

	Sentence	Minimum			Maximum	
Cnt	Date	Yrs	Mos	Days	Yrs	Mos
001	06/21/2006	20			45	
002	06/21/2006	2				
003	06/21/2006	2			7	
004	06/21/2006	2				

Cnt	Sentence Begins	Jail Mos	Cr Days	Other Info
001	06/21/2006			
002	06/21/2006		3	
003	06/21/2006			
004	06/21/2006		3	

Defendant shall pay $60.00 assessment for the Crime Victim Rights Fund. Defendant shall pay $240.00 for State minimum costs.

Fines, costs, and fees not paid within 56 days of the date owed are subject to a 20% late penalty on the amount owed.

Other: Count I AND III CONCURRENT; Counts II AND IV CONCURRENT;

Date: 06/21/2006

/s/DLM
Judge D. Langford Morris
P34884

Under MCL 769.16A, the Court Clerk shall send a copy of this order to the Mich State Police Central Records Div to create a Criminal History Record.

I certify that this is a correct and complete abstract from the original court records. The Sheriff shall, without needless delay, deliver Defendant to the Mich Dept of Corrections at a place designated by the department.

/s/ Rush
Deputy Court Clerk

cc 219B Judgment of Sentence, Commitment to Corrections Department Redford Twp. Police Dept.

APPENDIX D

MICHIGAN SUPREME COURT

SC: 128842
COA: 261249
Oakland CC: 2003-188576-FH

[Filed October 31, 2005]

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff-Appellee,

v

KEVIN MAURICE STARKS
Defendant-Appellant.

ORDER

On order of the Court, the application for leave to appeal the April 11, 2005 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should now be reviewed by this Court.

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 31, 2005 /s/Corbin R. Davis
Clerk

APPENDIX E

STATE OF MICHIGAN
COURT OF APPEALS

DOCKET No. 261249
LC No. 2003-188576-FH

[Filed April 11, 2005]

PEOPLE OF THE STATE OF MICHIGAN Plaintiff-Appellee,	)
v	)
KEVIN MAURICE STARKS Defendant-Appellant.	)

Before: Hilda R. Gage, Presiding Judge, Mark J. Cavanagh and Henry William Saad, Judges.

ORDER

The Court orders that the motion for immediate consideration is GRANTED.

The delayed application for leave to appeal is DENIED for failure to persuade the Court of the need for immediate appellate review.

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

Apr 11 2005
Date

/s/Sandra Schultz Mengel
Chief Clerk

APPENDIX F

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNT OF OAKLAND

CASE No. 03-188576-FH

[Filed September 28, 2004]

PEOPLE OF THE STATE OF MICHIGAN Plaintiff,	)
v	)
KEVIN MAURICE STARKS Defendant.	)

OPINION AND ORDER

This matter is before the Court on Defendant's Motion to Quash Search Warrant and Suppress Evidence. The Court heard oral arguments and took the matter under advisement. Having reviewed the Briefs and applicable law, as well as the entire record, and being fully advised in the premises, the Court now finds as follows.

Defendant brought the instant motion arguing that the search warrant affidavit did not provide the magistrate with facts and circumstances to support probable cause for issuance of the search warrant. The Court finds that the search warrant and affidavit, when read in a common sense and realistic manner, clearly indicate that the apartment the officers were seeking to search was the Defendant's. Therefore, the motion must be denied.
Accordingly,

IT IS HEREBY ORDERED that Defendant's Motion to Quash Search Warrant and Suppress Evidence is DENIED.

IT IS SO ORDERED.

Date: Sep 28 2004 /s/

DENISE LANGFORD MORRIS
CIRCUIT COURT JUDGE

APPENDIX G

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNT OF OAKLAND

CASE No. 03-188576-FH

[Filed July 22, 2004]

PEOPLE OF THE STATE OF MICHIGAN Plaintiff,	)
v	)
KEVIN MAURICE STARKS Defendant.	)

OPINION AND ORDER

This matter is before the Court on Defendant's Motion to Suppress. The Court having conducted an evidentiary hearing and having reviewed the Briefs and applicable law, as well as the entire record, and being fully advised in the premises, finds as follows.

FACTS

Defendant is charged with Possession with Intent to Deliver between 225 and 650 grams of Cocaine, contrary to MCL 333.6403(2)(a)(v), Possession of a Firearm in the Commission of a Felony, contrary to MCL 750.227b and Felon in Possession of a Firearm, contrary to MCL 750.224f. Defendant brought the instant motion arguing that his arrest was without probable cause.

ANALYSIS

At the evidentiary hearing, Officer Meade testified that on January 14, 2003, at approximately 4:00 p.m., he was monitoring the Redford Township White Castle parking lot for narcotics trafficking. (EHT, p 8) While monitoring the lot, Officer Meade observed a tan Cadillac for approximately five to ten minutes. The driver of the Cadillac did not exit the vehicle or go through the drive-up window. A Ford Ranger pulled up and its passenger got into the passenger seat of the Cadillac. The driver and the passenger sat in the Cadillac facing each other and talking. (EHT, pp 10-11). Officer Meade walked to the driver's side of the Cadillac and saw defendant hand the passenger a knotted-up sandwich baggie containing an of-white chalky substance. (EHT, pp 11-12) The passenger gave Defendant some money. Officer Meade tapped on the window and identified himself to Defendant. (EHT, pp 12-13) Defendant exited the vehicle and was placed under arrest. Officer DePrima testified that prior to the arrest, there was only one police vehicle present and that it pulled in behind the Cadillac. Officer DePrima testified that the Cadillac drew their attention because it was parked approximately fifty feet from the White Castle and was running for about ten minutes before the Ranger arrived. (EHT, p 36)

Defendant testified that he gave cocaine to the passenger in his vehicle, but that the transaction occurred before the police approached. (EHT, p 25) Defendant testified that after the transaction was completed, he saw police officers approaching from about 100 feet away. Defendant testified that two police vehicles blocked both his Cadillac and the Ranger from leaving the lot. (EHT, p 26) Defendant testified that he saw two officers approach the back of the Cadillac, knock on the glass, open the door and pull him out. (EHT, p 27)

In reviewing a claim that a police officer lacked probable cause to arrest, the court must determine whether facts available to the officer at the moment of arrest would justify a fair-minded person of average intelligence in believe that the suspected person has committed a felony. People v. Potter, 115 Mich App 125 (1982).

The Court finds that the testimony of the officers is credible. Based on the totality of circumstances, the Court finds that the officers had probable cause to believe that a narcotics transaction had occurred and therefore the arrest was proper. Accordingly,

IT IS HEREBY ORDERED that Defendant's Motion to Suppress is DENIED.

IT IS SO ORDERED.

Date: Jul 21 2004

/s/
DENISE LANGFORD MORRIS
CIRCUIT COURT JUDGE

APPENDIX H

STATE OF MICHIGAN
COUNTY OF OAKLAND

SEARCH WARRANT for:
24776 W. Woodside Ct. Apt 44205
Farmington Hills, MI 48335-2133

TO THE SHERIFF OR ANY PEACE OFFICER OF SAID COUNTY: 01/14/03

P.O. Al DiPrima

Affiant, having subscribed and sworn to an affidavit for Search Warrant, and I having under oath examined affiant, am satisfied that probable cause exists.

THEREFORE, IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN, I command that you search the following described place:

> The entire premises located at 24776 W. Woodside Apt. 44205 described as a multi family dwelling constructed of beige siding and white trim. The numbers 44205 are to the left of the front door. The residence is located in, County of Oakland, State of Michigan. The residence has a detached garage.

And to seize, secure, tabulate and make return according to law the following property and things: All suspected controlled substances, all items used in the connection with

the sales, manufacture, use, storage, distribution, transportation, delivery or concealment of controlled substances. All books, records and tally sheets indicating sales of controlled substances. All pre-recorded funds used to make purchases of controlled substances, all Monies and valuables derived from the sale of controlled substances. All firearms and items establishing ownership, control, occupancy or possession of the above described place. All photographs, photo albums, and video cassettes that depict controlled substances and/or proceeds from controlled substances. All bank records, statements and safety deposit keys.

/s/A. DiPrima
Affiant

Page 1 of 4 Pages
Subscribed and sworn to before me and issued under my hand this 14th day of January, 2003, 10:45pm

Approved:
Asst. Prosecuting Attorney
Mojisob Clement
56276

/s/ P30727
Judge of 17th District Court
Wayne Co., Michigan and a Magistrate

STATE OF MICHIGAN
COUNTY OF OAKLAND

AFFIDAVIT

ADDRESS: 24776 W. Woodside Ct. Apt. 44205 Farmington Hills, MI 48335-2133

The Affiant in support of the issuance of this Warrant swears to the following facts.

1. Affiant is a Redford Twp. Police Officer currently assigned to the Special Investigation Bureau, whose duties include narcotic investigations.

2. On 1/14/03 at approximately 1600 hours Affiant and P.O. Meade were in the lot of the White Castle (24000 Schoolcraft). This is a known location for narcotic transactions. Affiant along with other members of the Redford Special Investigations Bureau have frequently monitored this lot for narcotic transactions and have made numerous arrest for possession/sales of illegal narcotics. Affiant and P.O. Meade observed a tan Cadillac (MI/VGG640) to be parked in the middle of the lot. Affiant and P.O. Meade also observed a blue Ford Ranger (7904HZ) to be parked across from the Cadillac. Affiant and P.O. Meade observed a W/M, later identified as Miscuk, to exit the Ranger and get into the passenger side of the Cadillac. An unknown B/M drove the Cadillac. Through training and experience Officers believed that this was a narcotic transaction. Officers approached to investigate. P.O. Meade approached the driver's side and observed the B/M, later identified as Starks, to hand Miscuk and clear knotted plastic baggie containing a white powder substance (suspected to be cocaine). P.O. Meade then observed Miscuk to hand Starks an unknown amount

of U.S. currency (later found to be $150.00). At this point Officers identified ourselves as Redford Township Police Officers and asked Starks and Miscuk to exit the vehicle. Both subjects complied and were arrested for VPHC and transported to RTPD. A female in the Ranger, identified as Haskins, was also arrested for loitering and transported to RTPD.
The cocaine field-tested positive at RTPD.

/s/A. DiPrima
AFFIANT

Page 2 of 4 Pages
Subscribed and sworn to before me and issued under my hand this 14th day of January, 2003, 10:45pm

Approved:
Asst. Prosecuting Attorney

/s/ P30727
Judge of 17th District Court
Wayne Co., Michigan and a Magistrate

STATE OF MICHIGAN
COUNTY OF OAKLAND

AFFIDAVIT
ADDRESS: 24776 W. Woodside Ct. Apt. 44205 Farmington Hills, MI 48335-2133

3. At RTPD Affiant conducted an interview of Miscuk. Miscuk was read his Miranda Rights and agreed to talk. Miscuk completed the following statement under Miranda; Called Kevin at approx. 3:30 PM meeting @ 4:00 PM White Castle to get eightball of Coke for 150.00. Met at 4:00ish got in his car and gave him 150.00 for the eightball of Coke and Al (Redford Police Officer) showed up (Kevin handed me the eightball for 150.00. Affiant then asked Miscuk the following questions still under Miranda;

Q. Where was Kevin when you called him?

A. Kevin said he was at his apartment in Farmington Hills and would be leaving there to meet me at the White Castle.

Q. Have you bought cocaine from Kevin in the past?

A. Yes

Q. How many times?

A. Approximately twelve times

Q. Have you ever bought cocaine from Kevin's apartment in Farmington Hills?

A. Yes, I was there about four months ago a saw a big plastic baggie full of cocaine.

Q. Do you know anyone else that buys cocaine from Kevin?

A. Yes, I have several friends that have bought cocaine from him in the past.

4. At RTPD Affiant then conducted an interview of Starks. Starks was also read his Miranda Rights and agreed to talk. Affiant then asked Starks the following questions:

Q. Do you know why you were arrested?
A. For a drug deal.
Q. What did the officers find?
A. Money and cocaine
Q. Where did the cocaine come from?
A. From me
Q. Where did you get the cocaine from?
A. A guy I know
Q. Is their cocaine in your Apt. ?
A. Yes
Q. How much cocaine and where is it?
A. ½ Kilo and its under the bathroom sink
Q. Any large sums of money in your apt. ?
A. A thousand dollars
Q. Can the Redford Police search your Apt. ?
A. Yes
Q. Will you sign a consent to search your Apt. ?
A. Yes (and Kevin signed the form)

/s/A. DiPrima
AFFIANT

Page 3 of 4 Pages
Subscribed and sworn to before me and issued under my hand this 14th day of January, 2003, 10:45pm

Approved:
Asst. Prosecuting Attorney

/s/ P30727
Judge of 17th District Court
Wayne Co., Michigan and a Magistrate

STATE OF MICHIGAN
COUNTY OF OAKLAND

AFFIDAVIT
ADDRESS: 24776 W. Woodside Ct. Apt. 44205 Farmington Hills, MI 48335-2133

5. That in the experience of this Affiant firearms and weapons are consistently found in places where illegal drugs are kept and sold for the protection of drugs and money

6. That the execution of this search warrant is necessary to obtain evidence of a violation of the public health code being committed at 24778 W. Woodside Ct. Apt. 44205 Farmington Hills, MI 48335-2133

7. Wherefore the Affiant has probable cause to believe that the items will be found in the above location.

/s/A. DiPrima
AFFIANT

Page 4 of 4 Pages
Subscribed and sworn to before me and issued under my hand this 14th day of January, 2003, 10:45pm

Approved:
Asst. Prosecuting Attorney

/s/
Judge of 17th District Court
Wayne Co., Michigan and a Magistrate

APPENDIX I

STATE OF MICHIGAN

COUNTY OF WAYNE

RETURN TO SEARCH WARRANT

I hereby certify and return, that by virtue of the within Search Warrant to me directed, I have searched for the goods and chattels therein named, at the placed therein described.

1) and that I have such goods and chattels before the court, described as follows:

S/E Bedroom - One glory money counter located in the closet. Device # 32266

$1,700.00 located in a Sprint cell phone box was found in the N/E bedroom

Two cell phone chargers were also found in the N/E bedroom

2) and that I have been unable to find such goods and chattels.

/s/A D R #165
Municipal Police Officer

Dated at, time: 2325
this 14th day of January

Address: 24776 W. Woodside Ct Apt 44205
Farmington Hills, MI 48335

STATE OF MICHIGAN

COUNTY OF WAYNE

RETURN TO SEARCH WARRANT

I hereby certify and return, that by virtue of the within Search Warrant to me directed, I have searched for the goods and chattels therein named, at the placed therein described.

1) and that I have such goods and chattels before the court, described as follows:

N/E BEDROOM BATHROOM - Under the sink was a Buschs grocery bag containing 18 clear knotted plastic baggies containing an off white chunky substance. Also in the bathroom were papers of residency for Kevin Starks (Jet mag) and 46th District Court paperwork

N/E BEDROOM - Two Ashiba scales located in the top dresser drawers. (silver scale in the right drawer and gold scale in the left).

- Glock 23 .40 cal Ser # DZY895 US in the nightstand along with two magazines.

- One Rolex watch next to the bag

- One clear plastic knotted baggie containing an off white chunky substance on the closet floor.

2) and that I have been unable to find such goods and chattels.

/s/A D R #165
Municipal Police Officer

Dated at, time: 2325
this 14th day of January
Address: 24776 W. Woodside Ct Apt 44205
Farmington Hills, MI 48335

APPENDIX J

28 U.S.C. § 1257

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by write of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.